(1)

Supreme Court, U.S.
FILED

011735 MAY 22 2002

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

TOM EASTON and ELENA EASTON,
and as successors in interest of decedent
MARGARETHA MARY WINCHESTER,
Petitioners,

v.

JIM MAREADY, DEL NORTE SHERIFF;
DEPUTY SHERIFF THOMAS HOCKABOUT;
DEPUTY SHERIFF GERALD HARWOOD;
DEPUTY SHERIFF GARTH GOODRICH;
STEPHAN BROHMER, DIRECTOR DEL NORTE
ADULT PROTECTIVE SERVICES; each in their
individual and official capacity.

On Petition For Writ of Certiorari
To The Court of Appeal of the State of California

PETITION FOR WRIT OF CERTIORARI

Tom Easton
Counsel of Record
Law Office of Thomas Dewey Easton
California State Bar No. 109218
2782 NE Baroness Place
Bend, Oregon 97701-6382
Tel: (541) 317-9700
Fax: (541) 317-9800

22 pp

QUESTIONS PRESENTED FOR REVIEW

1. May California's Elder Abuse Act legislate away the Fourth Amendment rights of an elder citizen to be free of warrantless entry and seizure by granting absolute immunity to law enforcement officers who have seized an 88 year old dying woman from her own bed in her own home and transported her to a local hospital, where she was intubated and restrained for three days?

2. May California's Elder Abuse Act legislate away an elder patient's right to refuse unwanted medical treatment under the Patient Self Determination Act, 42 U.S.C. § 1395cc(f)(1)(A)(i) without violating her civil rights under 42 U.S.C. § 1983?

TABLE OF CONTENTS

I. Introduction 1

II. Basis for Jurisdiction 2

III. Statement of the Case 2

IV. Subsection 15634(b) of California's Elder Abuse Act Is Unconstitutional 3

V. The Patient's Bill of Rights, As Well As the Elder Abuse Act, Allows Any Victim to Withhold Consent 5

VI. Conclusion 7

TABLE OF AUTHORITIES

CASES

Calabretta v. Floyd, 189 F.3d 808 (1999) 4

Camara v. Municipal Court, 387 U.S. 523 (1967) . . . 4

Crusan v. Missouri Department of Health,
497 U.S. 261 (1990) 5

Easton v. Maready, 2001 Cal. App.
LEXIS 2669 . . . . . Appendix 1-10

Easton v. Maready, 2002 Cal.
LEXIS 1704, Pet for Rev Den . . . . Appendix 11

STATUTES

42 United States Code § 1395cc(f)(1)(A)(i)) 1,5,7

42 United States Code § 1983 2

California Welfare & Institutions
Code § 15634(b) 1,3,4,7

California Welfare & Institutions
Code § 15636(a) 6

IN THE

Supreme Court of the United States

TOM EASTON et al.,

Petitioners,

v.

JIM MAREADY, DEL NORTE SHERIFF; et al.

PETITION FOR WRIT OF CERTIORARI

I. INTRODUCTION

The State of California's Elder Abuse Act has legislated away the one of the most sacred rights of citizens in a free country: the Fourth Amendment right of all citizens to be safe and secure in their own homes from any warrantless invasion by law enforcement.

The same provision of the Elder Abuse Act further abridges a patient's federal right to refuse unwanted medical treatment under the Patient Self Determination Act of 1990, 42 U.S.C. § 1395cc(f)(1)(A)(i)).

The California Court of Appeal held that law enforcement had absolute immunity under the Elder Abuse Act's subsection 15634(b), to enter a private home without warrant and seize the dying woman against her will and that of her caretakers. The California Supreme Court denied review.

II. BASIS FOR JURISDICTION

The unpublished opinion of the California Court of Appeal was filed November 28, 2001 [Appendix 1-10].

The Petition for Review in the California Supreme Court was denied March 13, 2002 [Appendix 11].

This Petition for Certiorari under Rule 10 for federal civil rights questions is timely under Rule 13.1 as less than 90 days from denial by the state court of last resort.

III. STATEMENT OF THE CASE

On October 20, 1998, three deputy sheriffs forcibly entered petitioners' home in Crescent City, California, without search warrant or consent accompanied by two Emergency Medical Technicians (EMT's).

The deputies directed the EMT's to transport petitioner's mother, 88 year old Margaretha Winchester, against her will to the local hospital, Sutter Coast Hospital in Crescent City.

Winchester was restrained and intubated for three days before being allowed to return to her home, where she died nine days later of functional old age.

Petitioners brought this action on September 2, 1999 under 42 U.S.C. § 1983 for violations of civil rights and right to refuse unwanted medical treatment.

On October 25, 2000, the trial court granted defendants' motion for summary judgment.

Petitioners timely appealed. The California Court of Appeal, First Appellate District, issued its unpublished opinion on November 28, 2001 [Appendix 1-10]. The California Supreme Court denied review on March 13, 2002 [Appendix 11].

IV. SUBSECTION 15634(b) OF CALIFORNIA'S ELDER ABUSE ACT IS UNCONSTITUTIONAL

California's Elder Abuse Act is unconstitutional insofar as it abridges any citizen's rights under the Fourth Amendment. More specifically, this subsection:

> "**Any** care custodian, health practitioner, or **employee of** an adult protective services agency or **a local law enforcement agency who, pursuant to a request from** an adult protective services agency or **a local law enforcement agency, provides the requesting agency with access to the victim** of a known or suspected instance of elder or dependent adult abuse **shall not incur civil or criminal liability as a result of providing that access.**" § 15634(b). [Emphasis added]

Yet the California Court of Appeal ignored the patent unconstitutionality and held that:

> ". . . (§ 15634, subd. (b).) . . . In the case before us, we conclude that the same statute also provides **absolute immunity** to the sheriff's deputies who entered the home without a warrant in order to allow those paramedics to remove Winchester." *Easton v. Maready*, 2001 Cal. App. LEXIS 2669,*8-9, Appendix at 7. [Emphasis added]

It appears an absurd reading in light of Fourth Amendment jurisprudence that any California statute

may allow law enforcement to enter a dwelling without warrant or exigent circumstance.

A line of cases in the Ninth Circuit, based on this Court's holding in *Camara v. Municipal Court*, 387 U.S. 523 (1967), demonstrates that administrative searches and seizures must follow the requirements of the Fourth Amendment.

Thus in a recent case, where the issue was whether a social worker and a police officer were entitled to qualified immunity, the Ninth Circuit Court of Appeal correctly stated the law under *Camara*:

> "The principle that government officials cannot coerce entry into people's houses without a search warrant or applicability of an established exception to the requirement of a search warrant is so well established that any reasonable officer would know it . . . appellants' claim, that 'a search warrant is not required for home investigatory visits by social workers,' is simply not the law." *Calabretta v. Floyd*, 189 F.3d 808, 813 (1999).

This Court should find that the statute, as drafted by the California legislature and as interpreted by the Court of Appeal, unconstitutionally deprives elder citizens of their rights under the Fourth Amendment to be safe and secure in their own homes.

V. THE PATIENT'S BILL OF RIGHTS, AS WELL AS THE ELDER ABUSE ACT ITSELF, ALLOWS ANY VICTIM TO WITHHOLD CONSENT

In *Crusan v. Missouri Department of Health*, 497 U.S. 261 (1990), this Court held that any person has a protected liberty interest in refusing unwanted medical care. This right to decline medical treatment was thereafter enacted into federal law in 1990 in the Patient Self Determination Act:

> "(A) to provide written information to each such individual concerning - (i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)). . ." 42 U.S.C. § 1395cc(f)(1)(A)(i).

The Sutter Coast Hospital to which Winchester was taken had in fact the week before provided her with a written statement of that right to refuse treatment:

> "You can say no to any treatment you don't want - - even if the treatment will keep you alive longer." CT 506.

There can be no question that Winchester refused her consent to be taken away for unwanted medical treatment.

The report of EMT Debbie Snow fully corroborated petitioners' testimony that Winchester refused treatment and hospitalization by shaking her head "no"

in response to questioning by the EMT:

> "PT [patient] LET US TAKE HER V.S. [vital signs] **BUT THEN WHEN I TOLD HER I WOULD LIKE TO TAKE HER S.C.H.** [Sutter Coast Hospital] **SHE PULLED AWAY FROM ME. I ASKED IF THAT WAS O.K. TO TAKE HER AND SHE SAID SHOOK HER HEAD NO. AFTER THAT PT WOULDN'T LET ME RECHECK V.S. OR ANY THING. SHE WOULD JUST PULL AWAY**. . . . AS WE WERE LEAVING THE SON SAID THIS WAS AGAINST HIS WHISHES (sic) AND HIS MOTHERS. HE HUGGED HER AND KISSED HER AND SAID THAT WE SHOULD BE ASHAMED OF OUR SELF'S (sic)." EMT REPORT OF DEBBIE SNOW, CT 503-504. [Emphasis added]

The Elder Abuse Act further provides elsewhere, and ignored by the Court of Appeal's decision, that any alleged victim of elder abuse may refuse consent:

> **"Any victim of elder or dependent adult abuse may refuse or withdraw consent at any time** to an investigation or the provision of protective services by an adult protective services agency or long-term care ombudsman program. **The adult protective services agency shall act only with the consent of the victim** . . ." W&I 15636 (a).[Emphasis added]

VI. CONCLUSION

Any elderly person in California is now in jeopardy of being arbitrarily seized, even out of his or her own home, and forced into unwanted medical treatment.

This makes a mockery of the law, both of the federal right to refuse unwanted medical treatment and of one of our most precious freedoms: to be safe and secure in our homes under the Fourth Amendment.

Subsection 15634(b) of the Elder Abuse Act, as interpreted by the California Court of Appeal, is facially unconstitutional under 42 U.S.C. § 1395cc(f)(1)(A)(i) and the Fourth Amendment. Petitioners request that this Court grant this Petition for Writ of Certiorari to the California Court of Appeal.

Dated: May 22, 2002.

Respectfully submitted,

TOM EASTON
Counsel of Record

TOM EASTON et al., Individually and as Successors in Interest, etc., Plaintiffs and Appellants, v. JIM MAREADY, as Sheriff, etc., et al., Defendants and Respondents.

A093279

COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FOUR

2001 Cal. App. LEXIS 2669

November 28, 2001, Filed

NOTICE: [*1] NOT TO BE PUBLISHED IN OFFICIAL REPORTS CALIFORNIA RULES OF COURT, RULE 977(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 977(B). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR PURPOSES OF RULE 977.

PRIOR HISTORY: (Del Norte County Super. Ct. No. 990443).

JUDGES: Reardon, Acting P.J. We concur: Sepulveda, J., Kay, J.

OPINION BY: Reardon

OPINION:

The trial court granted the motion for summary judgment filed by respondents Del Norte County Sheriff Jim Maready and other officials, entering judgment

against appellants Tom and Elena Easton on their suit alleging federal civil rights violations. The Eastons appeal the subsequent judgment in favor of Maready and the other officials, contending inter alia that the Elder Abuse and Dependent Adult Civil Protection Act (the Act) did not confer governmental immunity on the officers. (See Welf. & Inst. Code, n1 §§ 15601-15660.) We disagree, finding that the sheriff and other county officials enjoyed an absolute immunity against [*2] liability. Thus, we affirm the judgment.

----------Footnotes----------

n1 All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

----------End Footnotes----------

I. FACTS

Margaretha Winchester--an elderly woman who had suffered from dementia since 1991--resided at her Crescent City home with her son, appellant Tom Easton, and his wife Elena. On September 26, 1998, n2 the 88-year-old Winchester collapsed

PAGE 2 2001 Cal. App. LEXIS 2669, *2

outside the residence after returning from a walk. Her condition began to decline rapidly after this incident. The Eastons believed that Winchester was dying. On October 13, she was treated at a hospital. On discharge, she was prescribed medication for a urinary tract infection. A home health care worker was to visit regularly for a week to allow the Eastons to become familiar with the routine required to care for Winchester's condition. On October 19, a heath care worker discovered that Easton had not filled the prescription to treat his mother's infection.

- - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - -

n2 All dates refer to the 1998 calendar year unless otherwise indicated.

- - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - -

[*3]

By October 20, Winchester's condition had gone untreated for a week. On that day, Easton disagreed with health care officials about her medical treatment. A health care official urged Easton to bring Winchester to the hospital for treatment of her infection, but Easton did not want to have medical personnel attend her and prolong her life a few days or weeks longer. Winchester's physician contacted the emergency number for the Del Norte County Sheriff and reported that Easton would not allow medical personnel to treat Winchester's acute, but treatable urinary tract infection, suggesting that his neglect constituted elder abuse. She also reported that Easton would not allow Winchester's prescriptions to be filled and suggested that Easton might be using Winchester's pension in an improper manner. Finally, she told the sheriff's office that Winchester's infection posed a risk of falling blood pressure which could be life-threatening. The doctor asked to have Winchester brought to the hospital.

By 6:30 p.m. that evening, three Del Norte County Deputy Sheriffs--Thomas Hockabout, Gerald Harwood and Garth Goodrich--were dispatched to the Easton home in response to the physician's call. [*4] Hockabout entered the house and evaluated Winchester's condition, concluding that she was severely disabled--both mentally and physically. She appeared to him to be in very poor health--malnourished, weak and frail--as well as completely unresponsive to questioning. An emergency medical technician reported that Winchester's blood pressure was very low. Hockabout

concluded that Winchester was unable to understand the risks to her health, and that there was an immediate risk to her life and/or physical well-being. Hockabout allowed emergency medical personnel to transport Winchester to the hospital by ambulance.

On October 21, Easton filed a civil rights action against the hospital, ambulance and medical personnel. (See Easton v. Sutter Coast Hospital (2000) 80 Cal.App.-4th 485, cert. den. 531 U.S. 1084, 148 L. Ed. 2d 686, 121 S. Ct. 790 (Easton I). Winchester was released from the hospital on October 23. She died on November 1. The Eastons filed a government tort claim in February 1999. The Del Norte County Board of Supervisors denied the claim in March 1999.

In September 1999, the Eastons brought a civil rights action for damages against the three [*5] deputies who responded to their home. They sued individually and as successors in interest of Winchester. (See 42 U.S.C. § 1983.) It alleged that Hockabout, Harwood and Goodrich violated their civil rights, individually, and those of the deceased Margaretha Winchester, for whom

they served as successors in interest. The Eastons alleged that the deputies made a warrantless entry into their home without their consent and caused emergency personnel to trespass into it for the purpose of falsely imprisoning Winchester. The complaint also named Del Norte County Sheriff Jim Maready and Del Norte County Department of Social Services Director Stephen Brohmer as defendants, alleging that they each owed a duty to train and supervise the deputies, which they breached. In October 1999, the officials answered the complaint, denying the allegations and offering various affirmative defenses, including governmental immunity.

In April 2000, we issued our decision in Easton I, upholding a judgment of dismissal of the action that the Eastons filed against the medical officials who prompted the Del Norte County Sheriff's office to enter the home and remove Winchester to a [*6] hospital. In May 2000, the county officials moved for summary judgment in the suit now before us.

In June 2000, the trial court held argument on the motion for summary judgment and in July 2000, it issued a notice of its intended decision to grant the motion. The defendants were permitted to amend their answer to add an allegation of absolute immunity pursuant to section 15634, subdivision (b). In September 2000, the trial court held a second hearing on the motion, indicating that the decision in Easton I resolved the issues in the case at bar as well. Easton argued that our decision misinterpreted the Act and should not be followed.

The trial court rejected this argument and granted the motion for summary judgment. It found that the deputies did not need a warrant to enter the Easton home because they did so pursuant to the emergency exception to the warrant requirement. The trial court concluded that Deputy Hockabout provided access to transport Winchester to the hospital based on his reasonable belief that she was gravely disabled as the result of a mental disorder. It also concluded that the deputies were immune from liability pursuant to section 15634, subdivision (b) and [*7] our decision in Easton I. Finally, it found the deputies immune under qualified immunity afforded to government officials under federal law.

The trial court also concluded that Maready and

Brohmer were entitled to summary judgment. It found that neither Maready nor Brohmer had any knowledge of the events of October 20 until after they occurred and, thus, were not active participants in those events. They had no direct supervision or training responsibilities for the responding deputies. The trial court found no facts suggesting a pattern and practice of inadequate training of deputies with regard to the issues raised in the Eastons' complaint. The trial court found no triable issues of material fact as to all of the causes of action alleged against the defendants in the Eastons' complaint. Judgment consistent with this ruling was entered in September 2000.

II. IMMUNITY

A. Responding Deputies

Hockabout, Harwood and Goodrich argue that they are absolutely immune from liability under the Act, citing Easton I. For their part, the Eastons contend that that decision does not apply to this matter. We disagree and conclude that Easton I is dispositive [*8] of the case now before us.

PAGE 4 2001 Cal. App. LEXIS 2669, *8

The Legislature has provided that any local law enforcement agency employee who provides an agency reporting suspected elder abuse with access to the victim of a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of providing that access. (§ 15634, subd. (b).) In Easton I, we construed this provision to confer a broad and absolute immunity for persons who provide access to the victims of suspected abuse. (Easton I, supra, 80 Cal.App.4th at pp. 488-489, 495--

496.) We found that the paramedics who entered the Crescent City residence to remove Winchester to the hospital enjoyed an absolute immunity against claims of trespass and false imprisonment based on their entry of the home without the Eastons' consent. (Id. at pp. 495-496.) In the case before us, we conclude that the same statute also provides absolute immunity to the sheriff's deputies who entered the home without a warrant in order to allow those paramedics to remove Winchester. As we explained in Easton I, it would undercut the ultimate goal of the Act if it did not protect both those who [*9] report suspected elder abuse and those who intervene in order to protect the victims of suspected elder abuse. (Easton I, supra, 80 Cal.App.-4th at p. 495; see § 15600, subd. (i).)

The Eastons raise several objections to the application of this provision of the Act. First, they argue that chapter 12 of the Act cannot constitute a basis for immunity because it had not been adopted in Del Norte County and because the county did not comply with the provisions contained in that chapter. (See §§ 15700--15755.) However, this argument is inapplicable to our case, as the statutory immunity set out in section 15634 is contained in chapter 11 of the Act. (See §§ 15600-15660.)

The Eastons also contend that the statutory immunity does not apply because a victim of elder abuse has the right to withdraw consent to services unless criminal conduct has been alleged. (See § 15636, subd. (a).) This argument is based on their assertion that Winchester refused to consent to emergency treatment. However, the trial court found that she had been "completely unresponsive" to Hockabout when he questioned her. The Eastons have not established the factual predicate

of their claimed application [*10] of this provision.

Finally, the Eastons argue that if Winchester was so incapacitated that she could not legally give or deny consent to protective services, the county's only alternative under section 15636 was to appoint a conservator or guardian for her. However, this statute is permissive, providing that a conservatorship or guardianship may be sought. (See § 15636, subd. (b).) This permissive language is inconsistent with the Eastons' contention that seeking a conservatorship or guardianship was mandatory before the county could intervene. The Eastons' apparent claim that no emergency intervention could ever lawfully occur if the alleged victim was so incapacitated that she could not legally give or deny consent to protective services also defies one purpose of the Act, which is "to aid all victims of abuse in a timely, compassionate manner." (§ 15601, subd. (b).) We are satisfied from our reading of the Act that the Legislature contemplated the type of emergency action taken by Del Norte County officials in this matter.

B. Other Officials

The Eastons brought their action against the three responding deputies and two other officials--Del Norte County Sheriff [*11] Jim Maready and Del Norte

County Department of Social Services Director Stephen Brohmer--whom they characterized as having supervisory responsibilities for those deputies which they allegedly failed to properly discharge. The liability of Maready and Brohmer is derivative, based on the actions of the deputies, who enjoy an absolute immunity from liability. Thus, as the responding deputies were immune from liability for their direct actions on October

20, so were Maready and Brohmer absolutely immune from any derivative liability based on their alleged failure to properly supervise and train the deputies.

C. Effect of Immunity

On appeal from a grant of summary judgment, we determine anew whether there is a triable issue of material fact or whether the moving party is entitled to summary judgment as a matter of law. (See Code Civ. Proc., § 437c, subd. (c); Jambazian v. Borden (1994) 25 Cal.App.4th 836, 844; see also Villa v. McFerren (1995) 35 Cal.App.4th 733, 741; Union Bank v. Superior Court (1995) 31 Cal.App.4th 573, 579.) If the moving party meets its burden of showing a complete defense to [*12] the action, then the burden of proof shifts to the opposing party to show that a triable issue of material fact exists as to that cause of action or defense. (See Code Civ. Proc., § 437c, subd. (o)(2); Jambazian v. Borden, supra, 25 Cal.App.4th at pp. 843-844.) The opposing party may not rely on the allegations or denials in the pleadings, but must set forth specific facts showing that a triable issue of material fact exists. (See Code Civ. Proc., § 437c, subd. (o)(2); Union Bank v. Superior Court, supra, 31 Cal.App.4th at p. 590.)

In our case, the moving party--the county officials--established an absolute immunity from liability for all the claims pled. (See § 15634, subd. (b). The Eastons have not established any triable issue of material fact that could override this absolute immunity. To the extent that they raise procedural issues implicating their constitutional right to a jury trial, we find that the summary judgment on liability necessarily precludes trial--before a jury or a court--on the underlying issues. (See AOB 13-21) (See U.S. Const., 5th &

14th Amends.; Cal. Const., art. [*13] I; § 16; Code Civ. Proc., § 437, subd. (c).) The judgment is affirmed.

Reardon, Acting P.J.

We concur:

Sepulveda, J.

Kay, J.

Tom Easton et al., Appellants v. Jim Maready, as Sheriff, etc. et al., Respondents

S103387

SUPREME COURT OF CALIFORNIA

2002 Cal. LEXIS 1704

March 13, 2002, Decided

NOTICE:
[*1] DECISION WITHOUT PUBLISHED OPINION

PRIOR HISTORY:
Appeal from First Appellate District. Division Four. No. A093279.

OPINION:

Petition for review DENIED.